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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LAURIE MALDAGUE, Plaintiff and Appellant, v. DANIEL CASTRO et al., Defendants and Respondents.	B202613 (Los Angeles County Super. Ct. No. BC355331)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rita J. Miller, Judge. Reversed and remanded with directions.

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Evan D. Marshall for Plaintiff and Appellant.

Carlson & Messer, Charles R. Messer and Stephen A. Watkins for Defendants and Respondents.

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An employee appeals from the judgment entered after the trial court granted summary judgment in favor of her employer, Los Angeles Trade Technical College, in her action under the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12940 et seq.) and Labor Code section 1102.5 for retaliation for whistleblowing activities. Her complaint alleged that she had been retaliated against for complaining that college procedures and union rules had been violated when hiring an outsider as director of the college's writing center. We reverse.

BACKGROUND

"Because this case comes before us after the trial court granted a motion for summary judgment, we take the facts from the record that was before the trial court when it ruled on that motion. [Citation.] '"We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained."' [Citation.] We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. [Citation.]" (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1037.)

Maldague's Employment with Trade Tech

Appellant Laurie Maldague began working for respondent Los Angeles Trade Technical College (Trade Tech) in 1986 as an English instructor. Trade Tech is part of respondent Los Angeles Community College District. During her 21-year tenure at Trade Tech she received consistently excellent performance evaluations, numerous awards for her teaching skills, and had no record of discipline or complaints.

Agreements between the Los Angeles Community College District and the Los Angeles College Faculty Guild established polices governing assignments of instructors to specialty positions, limiting such assignments to regular and contract faculty. This limitation could be waived in special circumstances provided certain procedural requirements were met. One such requirement was that the specialty assignment first be

announced and circulated district wide to permit qualified faculty members with seniority to apply, and be considered, for the special assignment. In the event no faculty person qualified for the specialty assignment, the college could consider qualified candidates from outside the faculty.

Maldague returned from a sabbatical in June 2002 and learned that Trade Tech had hired a person from outside the faculty to fill the specialty assignment position of director of the writing center, and that it had done so outside the procedures outlined in the college's agreement with the faculty's union. Maldague heard that the appointee was a personal friend of a member of the board of trustees and that the appointment to the directorship of the writing center was made by the president of Trade Tech, respondent Daniel Castro, as a favor to the board member.

Maldague called the vice president of Trade Tech who confirmed that Castro appointed the outsider to the directorship of the writing center as a favor to the board member. She then called Castro who said the matter was "out of his hands" and directed Maldague to her department chair. Maldague next complained to her department chair who claimed that she had had no control over the selection process. Maldague reviewed the challenged appointment with her union representative who informed her that the appointment violated established college policy as well as the union contract for promotion of faculty members. Maldague called the chancellor to complain about the "egregious breach of procedures." She told the chancellor that if the appointment was not "remedied," that there could be legal consequences.

During the summer session of 2002, Maldague attended a meeting about the future direction of the writing center. During the meeting, respondent Raul Cardoza, Vice President of Academic Affairs, requested volunteers to perform a study of how other colleges organized and operated their writing centers. Maldague volunteered to conduct the study and she delivered her report at a later meeting. After the meeting Maldague approached Cardoza and asked him about her prospects for the position of director of the writing center. Cardoza told Maldague, "You're not in the mix." Maldague protested

and stated that she was the most qualified for the job because she was the only person in the faculty who had taught classes in each of the disciplines taught at the center. Thereafter, Maldague was not included in most meetings concerning the writing center.

During the spring semester of 2003, Cardoza confronted Maldague on campus and asked her, "'Are you the one that threatened a board of trustees member?'" Maldague confirmed that she had called the trustee reportedly responsible for hiring the outsider to be the director of the writing center to complain that the appointment was a breach of protocol and established procedures and that there could be legal consequences.

Trade Tech thereafter appointed two persons to be the director of the writing center, a librarian in 2003 and, after her, a technical instructor in June 2004, neither members of the English department faculty.

In June 2003 Cardoza reassigned three of Maldague's summer session classes to two part-time faculty members although she was already under contract to teach those classes. Maldague alerted her department chair who confirmed that Cardoza had been responsible for the reassignment. After some negotiation Cardoza restored the three classes to Maldague's schedule. Shortly thereafter, Maldague discovered that the locks had been changed to the writing center and that her keys no longer worked.

In the spring of 2004 Maldague learned that a part-time instructor had been given the specialty assignment of writing the course syllabus for the writing classes. Usually persons most familiar with the curriculum and most experienced in the English department wrote the course syllabus for the department. It was unprecedented for this type of assignment to be given to a part-time faculty member without input from the faculty. Maldague inquired of the department head why she had not received the assignment when the department head knew Maldague was interested in appointments to any type of special project involving the English department. The department head stated that she thought Maldague would not be interested in the job.

In April 2004 Maldague filed an administrative complaint with the Department of Fair Employment and Housing (DFEH) alleging age and sex discrimination and received a right-to-sue letter on April 27, 2004. She did not, however, file suit.

In June 2004 Maldague learned through her department head that Cardoza had cancelled three of her classes for the first summer session. In addition, Cardoza refused to provide Maldague with a key to the writing center. Three classes represented half of Maldague's expected course load which meant a 50 percent reduction in her anticipated salary. Cardoza said that he had cancelled her classes due to low enrollment. Trade Tech's internal records showed that enrollment in Maldague's first summer session classes had increased by nearly 100 percent from enrollment for the same classes the previous spring semester. Maldague showed these documents to her department head and complained that Cardoza's decision to cancel her classes was unreasonable. Ultimately, Cardoza relented and restored Maldague's class schedule for the first summer session.

For the second summer session in 2004, Maldague contracted to teach six hours in the writing center. In July 2004 respondent Bradley Vaden, Dean of Academic Affairs, cancelled half her classes, citing low enrollment as the reason. Vaden further informed Maldague that her classes would be moved out of the writing center and into a building on the outskirts of the campus. She protested the proposed move because the building lacked the writing center's support system of adequate computers, computer programmers, tutors, and a library. Vaden ultimately rescinded his order to move Maldague's classes out of the writing center but did not restore the cancelled classes to her schedule.

Maldague met with Castro in his office and asked why her class load had been cut in half. Castro informed her that as Trade Tech's president he had the right to cancel classes. Castro then demanded Maldague's key to the writing center. She refused to relinquish her key, stating she had a contract right to have access to the writing center. Castro told Maldague that she was a "troublemaker," and told her that he intended to

transfer her out of the college. Castro then called campus police to have her escorted out of his office.

Maldague reported the incident to the chancellor's office and to the police. Thereafter her keys no longer worked to unlock the writing center door. The classes were not restored resulting in a 50 percent reduction of what she had expected to earn in the second summer session.

In August 2004, just prior to the fall semester, Maldague learned that Vaden had again cancelled half of her anticipated class schedule, again citing low enrollment. She again lost half her anticipated salary as a result. Her remaining writing classes were moved to a lab in another building which lacked the support system and tools of the writing center.

Castro was replaced as president of Trade Tech in the summer of 2005. Deans Cardoza and Vaden were also reassigned. Maldague described acts that she perceived as retaliatory even after Castro, Cardoza and Vaden were replaced: (1) The head of the copying center refused to copy her course materials and sent an allegedly slanderous interoffice memo about her, (2) Trade Tech ordered an out-of-schedule evaluation of her, and (3) the dean of academic affairs, Reza Azarmsa, wrongly accused her of having numerous student complaints.

In July 2005 Maldague filed a second complaint with DFEH asserting claims that she had been retaliated against for having engaged in the protected activity of complaining to Trade Tech's chancellor, board of trustees and others about the appointment of an outsider as director of the writing center. She received a right-to-sue letter on July 13, 2005.

Maldague's Lawsuit for Retaliation

In July 2006 Maldague filed suit against Trade Tech, Los Angeles Community College District and individuals Castro, Cardoza, Vaden, and Gaspar (collectively Trade Tech). She filed a first amended complaint in December 2006 alleging claims for retaliation based on her writing center complaint in violation of FEHA, retaliation in

violation of Labor Code section 1102.5, and retaliation in violation of the public policies expressed in Business and Professions Code section 17500 and Labor Code section 1102.5.

Trade Tech's Motion for Summary Judgment

Trade Tech moved for summary judgment on the grounds that (1) because Maldague's 2006 lawsuit was not filed within one year of receipt of her April 2004 right-to-sue letter each of her causes of action was barred by applicable one-year statutes of limitations, and (2) it had legitimate, nonretaliatory reasons for the allegedly retaliatory acts both pre and post 2004 raised in Maldague's complaint.

To support its statute of limitations claim, Trade Tech argued that because Maldague did not file suit within one year of receiving her right-to-sue letter in April 2004, the claims covered by that right-to-sue letter were barred by FEHA's one-year statute of limitations. (Gov. Code, § 12965, subd. (b) [an aggrieved person may bring suit against the persons or entities named in the complaint within one year of receipt of a right-to-sue notice from DFEH].) With regard to the retaliatory acts asserted in Maldague's complaint which occurred after she received the April 2004 right-to-sue letter Trade Tech asserted that because they were of the same type and committed by the same persons, these new claims were subsumed within the April 2004 right-to-sue letter and similarly time barred. Regarding Maldague's Labor Code claims, Trade Tech argued that section 1102.5 provided for a penalty or forfeiture and thus these claims were governed by the one-year statute of limitations of Code of Civil Procedure section 340, subdivision (a) making these causes of action untimely as well.

In support of its claim of legitimate nonretaliatory reasons for its actions Trade Tech provided declarations from Trade Tech personnel. March Drummond, Vice President of Academic Affairs, testified that Maldague's early, and otherwise unscheduled, evaluation was the result of a lottery in which faculty were chosen at random for evaluation out of order. William Gaspar, Senior Administrative Analyst, testified that he did not copy Maldague's materials as requested because, until he had

further information, he could not ascertain whether her request infringed "fair use" principles of copyright law. Dean Reza Azarmsa testified that he apologized as soon as he realized he had wrongly accused Maldague of having numerous student grievances. Bradley Vaden, Trade Tech's Dean of Academic Affairs, stated that he cancelled some of Maldague's classes for the second summer session of 2004 due to low enrollment. Raul Cardoza, Vice President of Academic Affairs, told Maldague she was "not in the mix" to be appointed director of the writing center because he had heard that Maldague did not have the English department's support for the position.

Maldague's Opposition to Trade Tech's Motion for Summary Judgment

Maldague filed opposition, arguing that her claims were timely because the retaliatory acts asserted in her complaint showed an ongoing course of conduct and were thus timely pleaded under the continuing violation doctrine. She argued that the statute of limitations might have run had the retaliatory actions stopped in April 2004 with receipt of the right-to-sue letter, however, she argued, similar, but separate, acts of retaliation occurred after that date as well. Regarding Trade Tech's proffered neutral reasons for its actions, Maldague pointed out that Trade Tech had not provided any reasons at all for (1) cancelling her classes for the fall semester of 2004 although earlier sessions of the same classes with lower enrollment taught by another instructor had not been cancelled, (2) moving her fall 2004 writing lab classes to a facility lacking the necessary tools of the writing center, and (3) Castro's aggressive behavior toward her and his threats to transfer her from Trade Tech in July 2004.

Trade Tech's Reply In Support Of Its Summary Judgment Motion

Trade Tech filed a reply asserting that (1) the continuing violation doctrine did not apply to avoid the bar of the one-year statute of limitations because, among other reasons, the retaliation had reached a state of permanency by the time she received her first right-to-sue letter in April 2004, (2) Maldague failed to state a prima facie case of retaliation because she failed to demonstrate any of its conduct constituted an adverse employment action and further failed to show a causal link between the retaliatory acts and her earlier

protected activity, and (3) Maldague failed to show the reasons it proffered for its actions were pretexual.

Trial Court's Order Granting Summary Judgment

The court issued a seven-page written decision but did not rule on the parties' evidentiary objections. In its ruling, the court concluded that the one-year statute of limitations of FEHA barred Maldague's action. The court reasoned that claims covered by her original right-to-sue letter were barred and were not resurrected by obtaining a second right-to-sue letter. The court also rejected the alternative theory that the continuing violation doctrine applied, finding that Maldague's claims had reached a level of "permanency" in April 2004 as demonstrated by the fact Maldague filed a complaint under FEHA and received a right-to sue letter. The court further found that the class cancellations occurring after receipt of the first right-to-sue letter were so similar in kind to her earlier claims that these later claims should be considered part of the original complaint and were on this basis time barred as well. The court found none of the other non-time barred alleged acts of retaliation resulted in an adverse employment action and were thus not actionable. Accordingly, the court found there were no triable issues of fact and that Trade Tech was entitled to judgment as a matter of law.

DISCUSSION

Government Code section 12960, subdivision (d) specifies that, with certain exceptions inapplicable to this case, a FEHA complaint must be filed within one year from the date the unlawful practice allegedly occurred.[1] We need not decide whether the continuing violation doctrine applied in this case because Maldague alleged two new discrete adverse employment decisions which were independently actionable and, contrary to the trial court's conclusion, were thus not subsumed within her earlier time-

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[1] Government Code section 12960, subdivision (d) provides: "No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice or refusal to cooperate occurred, except [in certain circumstances inapplicable to this case]."

barred complaint. We find triable issues of material fact remain as to these two claims and conclude granting summary judgment was thus improper.

NEW CLAIMS SIMILAR OR RELATED TO TIME-BARRED CLAIMS

Trade Tech contends that the trial court correctly found that because the allegedly retaliatory acts which occurred after Maldague received her April 27, 2004 right-to-sue letter were similar in kind and related to the claims raised by her April 2004 FEHA complaint, they were subsumed within the earlier complaint, and time barred on that ground.

Trade Tech cites no authority for the proposition that discrete acts of retaliation timely filed in a new complaint are subsumed within an earlier time-barred complaint if the new acts are like or related to the time-barred claims. We are aware of no case law so holding and there is positive authority for the opposite proposition. In *National Railroad Passenger Corp. v. Morgan* (2002) 536 U.S. 101, the United States Supreme Court held that each new discrete discriminatory adverse employment action is separately actionable when raised in a timely-filed complaint. The *Morgan* Court explained that a new timely-filed complaint would not revive time-barred claims, even when they were related to acts alleged in timely filed charges, because "[e]ach discrete discriminatory act starts a new clock for filing charges alleging that act." (*Id*. at p. 113.) For this reason, the Court held an employee could file charges to cover discrete acts occurring within a new limitations period because "[e]ach incident of discrimination and each retaliatory adverse employment decision constitutes a separate actionable 'unlawful employment practice.'" (*Id*. at p. 114.)[2]

The decisions on which Trade Tech relies for its argument do not purport to bar on statute of limitations grounds later occurring discrete acts of retaliation or discrimination

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[2] Because the antidiscrimination objectives and relevant wording of title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) are similar to those of FEHA, California courts often look to federal decisions interpreting these statutes for assistance in interpreting FEHA. (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 812.)

"like or reasonably related to" time-barred claims earlier presented to DFEH for investigation. (See *Okoli v. Lockheed Technical Operations Co*. (1995) 36 Cal.App.4th 1607, 1614-1617; *Martin v. Lockheed Missiles & Space Co*. (1994) 29 Cal.App.4th 1718, 1728-1730; cf., *Lo v. Pan American World Airways, Inc*. (2d Cir. 1986) 787 F.2d 827 [discrimination action barred where second right-to-sue notice concerned "*exactly* the same facts as the first Notice" Italics added].) Instead of eliminating an employee's actionable new claims, the rule these and other decisions espouse is one of expanding an employee's right to include similar new claims. These decisions stand for the proposition that an employee is permitted to *include* as part of his or her lawsuit other discriminatory or retaliatory acts *provided the new acts are similar in type and kind to those originally asserted* in the FEHA claim. (See also, *Sanchez v. Standard Brands, Inc*. (5th Cir. 1970) 431 F.2d 455, 466 [if an investigation of what was charged in the EEOC would necessarily uncover other incidents that were not charged, the latter incidents could be included in a subsequent action]; *Jeter v. New York City Dept. of Education* (E.D. N.Y. 2008) 549 F.Supp.2d 295, 308 [plaintiff's "Title VII claims that were included or are 'reasonably related to' the [timely-filed] allegations, are timely and are not dismissed"].)

In this case, Maldague alleged two discrete retaliatory adverse employment actions which occurred after she received her April 27, 2004 right-to-sue letter and which were timely raised in her July 2005 complaint with DFEH. She claimed that as a retaliatory measure her classes had been cancelled on July 22, 2004 for the second summer session and that her classes had again been cancelled in August 2004 for the fall 2004 semester. Maldague asserted that each of these acts constituted an adverse employment action because she lost half of her anticipated salary due to the class cancellations. Each of these allegedly retaliatory adverse employment actions constituted a separate actionable unlawful employment practice and each was timely asserted in Maldague's 2005 FEHA complaint. As such, they were not barred by the statute of limitations. (*National Railroad Passenger Corp. v. Morgan, supra*, 536 U.S. at p. 113 ["The existence of past acts and the employee's prior knowledge of their occurrence . . .

does not bar employees from filing charges about related discrete acts so long as the acts are independently discriminatory and charges addressing those acts are themselves timely filed"].)

In any case, contrary to Trade Tech's argument, the two class cancellations which were the subject of her 2005 right-to-sue letter are different in both type and effect from the time-barred claims raised by her April 2004 complaint. The earlier claims in effect involved mere threats to cancel her classes, arguably presenting only the possibility of an adverse consequence. In contrast, the class cancellations in both the second summer session of 2004 and again in the fall session of 2004 actually occurred and each resulted in actual injury in the form of lost anticipated salary.

Accordingly, we conclude that the trial court erred in holding that Maldague's claim involving her twice-cancelled classes was time-barred.[3]

STANDARD OF REVIEW OF RETALIATION CLAIMS ON SUMMARY JUDGMENT

"Past California cases hold that in order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action. [Citations.] Once an employee establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory reason for the adverse employment action. [Citation.] If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation ""'drops out of the picture,'"" and the burden shifts back to the employee to prove intentional retaliation. [Citation.]" (*Yanowitz v. L'Oreal USA, Inc*., *supra,* 36 Cal.4th at p. 1042.)

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3 Of course, Maldague will be allowed to present evidence of the other events in this case to the extent the evidence is relevant and admissible under the Evidence Code. (See *National Railroad Passenger Corp. v. Morgan, supra,* 536 U.S. at p. 113 ["Nor does the statute bar an employee from using the prior acts as background evidence in support of a timely claim"].)

"[A]n employer is entitled to summary judgment if, considering the employer's innocent explanation for its actions, the evidence as a whole is insufficient to permit a rational inference that the employer's actual motive was [retaliatory]." (*Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 361.) On appeal after a motion for summary judgment has been granted, "we determine with respect to each cause of action whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff's case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law. [Citations.]" (*Id*. at pp. 334-335; Code Civ. Proc., § 437c, subd. (c).)

Prima Facie Case of Retaliation

To the extent a plaintiff opposing a motion for summary judgment has any burden to present triable evidence satisfying the prima facie elements of a retaliation claim Maldague has done so in this case.[4] (See, e.g., *Sada v. Robert F. Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 150, 151 [the burden rests with the moving party to negate the plaintiff's right to prevail on a particular issue, for this reason it is the employer moving for summary judgment who bears the burden of showing the employee cannot establish a prima facie case of discrimination]; see also, *Guz v. Bechtel National, Inc*., *supra*, 24 Cal.4th at pp. 356-357 [acknowledging a split of authority on the subject and finding it unnecessary to decide the issue].)

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4 Neither the trial court nor the parties—either in their summary judgment papers or on appeal—address Maldague's second cause of action for violation of Labor Code section 1102.5 or third cause of action for the common law tort claim for retaliation in violation of public policy separately from her first cause of action for retaliation in violation of FEHA. Although FEHA does not displace any causes of action otherwise available to a plaintiff (see *Rojo v. Kliger* (1990) 52 Cal.3d 65, 82), the contours of these others claims for retaliatory acts is by no means clear. Nonetheless, as do the parties, for purposes of this appeal we assume the causes of action for violation of the Labor Code and for violation of public policy stand or fall with the FEHA claim. Further, because we do not separately address these common law and statutory claims, we need not decide whether the trial court erred in concluding the one-year statute of limitations barred these claims as well. (See, e.g., *Murphy v. Kenneth Cole Productions, Inc*. (2007) 40 Cal.4th 1094, 1104-1111 [applying three-year statute of limitations to statutory claims under the Labor Code].)

Trade Tech conceded for purposes of its summary judgment motion that Maldague engaged in protected activity when she complained to Trade Tech's chancellor, board of trustees and others regarding the violation of governing rules by hiring an outsider to be director of the writing center.

The evidence showed, at minimum, that Maldague suffered adverse consequences in the terms and conditions of her employment by the loss of anticipated salary when Trade Tech cancelled her classes in the second summer session of 2004 and again in the fall session of 2004. (See *Pinero v. Specialty Restaurants Corp*. (2005) 130 Cal.App.4th 635, 646 [among other things a reduction in salary constitutes an adverse change in the terms and conditions of employment]; *Strother v. Southern California Permanente Medical Group* (9th Cir. 1996) 79 F.3d 859, 869 [a change of duties which impaired the employee's ability to receive merit pay increases amounted to an adverse employment action].)

Maldague also presented some evidence that Trade Tech took these retaliatory actions against her for having protested to Trade Tech's chancellor and board of trustees about Castro's hiring of an outsider to be director of the writing center in violation of college and union rules. Maldague's evidence showed that she was a model teacher and had no problems with the administration until she complained about the writing center appointment. Shortly thereafter, however, as described in the Background section of this opinion, she was passed over for assignments, her classes were cancelled and reinstated, she was not considered for either the writing center directorship or to rewrite the course syllabus, she was locked out of the writing center, her classes were moved to an undesirable location and, perhaps most injuriously, some of her classes were cancelled, Castro called her a troublemaker and threatened to transfer her out of the college. The juxtaposition of her earlier peaceful coexistence and success at the institution with the timing of her problems provides a sufficient causal link to satisfy her burden on summary judgment. (See, e.g., *Caldwell v. Paramount Unified School Dist*. (1995) 41 Cal.App.4th

189, 197 [very little evidence is required to establish a prima facie case of discrimination].)

Trade Tech's Legitimate, Nonretaliatory Reasons For Its Decisions

Trade Tech claimed its legitimate, nonretaliatory reason for cancelling Maldague's classes was "low enrollment." The evidence offered in support of this reason was (1) a declaration from former Dean Vaden who simply declared her classes "were cancelled" for "low enrollment" and (2) a copy of an inter-office memo dated July 22, 2004 so informing Maldague. The memorandum, however, concerns only the class cancellations for the second summer session of 2004.

Even assuming Vaden's declaration citing "low enrollment" satisfied Trade Tech's burden of presenting a neutral reason for its decision to cancel Maldague's second summer session classes, she presented evidence in the form of deposition testimony that the proffered reason of "low enrollment" was a mere pretext for retaliation. She testified that based on Trade Tech's internal documents enrollment in her cancelled classes was actually 50 percent higher than in the same classes during the spring semester and that Trade Tech had not cancelled those classes taught by another instructor. Maldague's evidence raised a triable issue of pretext to permit a rational jury to find Trade Tech's act of cancelling half of her 2004 second summer session classes, although enrollment was higher than in the same classes the previous semester, was retaliatory.

Further, Trade Tech provided no reason at all for cancelling half of Maldague's classes for the 2004 fall semester. This second series of class cancellations also resulted in the adverse employment action of Maldague losing half her anticipated salary. Because Trade Tech failed to carry its burden of offering a neutral reason for this separate and second set of class cancellations the burden never shifted to Maldague to produce evidence of pretext. Because Trade Tech failed to present any reason for cancelling these classes, there remain triable issues of fact whether cancelling Maldague's fall semester classes was retaliatory as well.

Trade Tech's summary judgment motion failed to address or to adequately address these particular claims, thus there remain triable issues of fact whether they constituted retaliatory acts for engaging in protected activities. (See *Yanowitz v. L'Oreal USA, Inc., supra*, 36 Cal.4th at p. 1062; *Guz v. Bechtel National, Inc*., *supra*, 24 Cal.4th at p. 361.)

DISPOSITION

The judgment is reversed and the cause is remanded to the trial court for further proceedings not inconsistent with this opinion. Maldague is to recover her costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

WEISBERG, J.*

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* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.